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State v. Caldwell Appellant's Reply Brief Dckt. 38515

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

RICHARD MYERS
CALDWELL,

Defendant-Appellant.

NO. 38515

REPLY BRIEF

COPY

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS

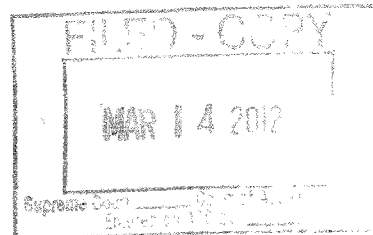
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STATEMENT OF THE CASE

Nature of the Case

In his Appellant's Brief, Mr. Caldwell argued that the Idaho Supreme Court denied him due process and equal protection under the law when it denied his Motion to Augment the record with various transcripts and exhibits, which were relied on by the district court at sentencing and in its disposition of his I.C.R. 35 motion. Additionally, Mr. Caldwell argued that the district court erred when it denied him counsel to represent him with regard to his I.C.R. 35 motion, and that the district court abused its discretion when it denied that motion.

This brief is necessary to address the State's assertion that there is no finding that Mr. Caldwell is indigent and its assertion that a district court's review of an I.C.R. 35 motion is limited to the information submitted in support of said motion.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Caldwell's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

1. Did the Idaho Supreme Court deny Mr. Caldwell due process and equal protection when it denied his Motion to Augment the record with various transcripts and exhibits, which were relied on by the district court at sentencing and in its disposition of his I.C.R. 35 motion?¹
2. Did the district court err when it determined that Mr. Caldwell's request for counsel in regard to his Idaho Criminal Rule 35 motion was frivolous?
3. Did the district court abuse its discretion when it denied Mr. Caldwell's Rule 35 Motion for a Reduction of Sentence in light of the financial and emotional hardships caused by his sentence and the negative impact his sentence is having on his mental health?

¹ This reply brief will only address the first issue.

ARGUMENT

The Idaho Supreme Court Denied Mr. Caldwell Due Process And Equal Protection When It Denied Mr. Caldwell's Motion To Augment The Record With Various Transcripts And Exhibits, Which Were Relied On By The District Court At Sentencing And In Its Disposition Of His I.C.R. 35 Motion

A. Introduction

In response to Mr. Caldwell's contention that he has been precluded from presenting an adequate record on appeal, the State argues first that there is no finding that Mr. Caldwell is indigent. However, the district court made an express finding that he is indigent when the State Appellate Public Defender was appointed to represent him in this appeal.

Additionally, the State argues that a district court can only consider information submitted in conjunction with an I.C.R. 35 motion. However, the Idaho Supreme Court has ruled that in an appeal from an I.C.R. 35 motion an appellate court will review entire record available to the trial court at sentencing.

B. The Idaho Supreme Court Denied Mr. Caldwell Due Process And Equal Protection When It Denied Mr. Caldwell's Motion To Augment The Record With Various Transcripts And Exhibits, Which Were Relied On By The District Court At Sentencing And In Its Disposition Of His I.C.R. 35 Motion

1. The District Court Found That Mr. Caldwell Was Indigent When It Appointed The Office Of The State Appellate Public Defender To Represent Him On This Appeal

In its Respondent's Brief, the State initially asserts, albeit in a footnote, that the district court never made a factual finding that Mr. Caldwell was indigent. (Respondent's Brief, p.4, n.2.) Contrary to the State's assertion, Mr. Caldwell filed a motion and affidavit in support of appointment of counsel and a motion an affidavit for

permission to proceed on partial payment of court fees, wherein Mr. Caldwell asserted his indigency. (R., pp.299-302.) Based on those two motions, the district court made a factual finding that Mr. Caldwell was indigent and appointed the office of the State Appellate Public Defender to represent him in this appeal. (R., pp.312-314.) Therefore, the district court did make an express factual finding that Mr. Caldwell was indigent, which is supported by substantial and competent evidence.

2. The State's Interpretation Of *State v. Strand*, 137 Idaho 457 (2002) Is Inaccurate And Unworkable

The State also argued that *State v. Strand*, 137 Idaho 457 (2002), limits a district court's review of an I.C.R. 35 motion to the "evidence submitted in support of the Rule 35 motion." (Respondent's Brief, p.6-11.) The State then argues, "Because none of the items requested augmented by [Mr. Caldwell] were before the district court in deciding the Rule 35 motion, they are not germane and are instead unnecessary for appellate review under the rationale and holding of *Strand*." (Respondent's Brief, pp.6-7.)

The interpretation of *Strand* advocated by the State is inaccurate and unworkable. Contrary to the State's assertion, *Strand* merely clarified that on an appeal from the disposition of an I.C.R. 35 motion, an indigent defendant is entitled to a transcript of the I.C.R. 35 hearing only if testimonial evidence was introduced at the hearing. *Strand*, 137 Idaho at 462-463. However, the *Strand* opinion does not limit a district court's review of an I.C.R. 35 motion to the evidence submitted in support of said motion. In fact, after holding that Mr. Strand was not entitled to a transcript of the I.C.R. 35 hearing, the Idaho Supreme Court ruled on the merits of Mr. Strand's I.C.R. 35

motion. *Id.* at 463-464. While ruling on the merits of his motion, the Idaho Supreme Court recited the following standard of review for an appeal from an I.C.R. 35 motion:

A motion to reduce an otherwise lawful sentence under Idaho Criminal Rule 35 is a plea for leniency. The decision of whether to grant a plea for leniency is in the sound discretion of the sentencing court and is reviewed for an abuse of discretion. If the initial sentence was not excessive when imposed, the appellant must show on appeal that it is excessive in light of new or additional information subsequently presented to the sentencing court in support of the motion to reduce the sentence. On appeal we examine the record before us, including evidence presented in connection with the motion, to determine whether the trial court abused its discretion in failing to grant the leniency requested.

Id. at 463 (emphasis added) (citations omitted). According to the *Strand* opinion, an Idaho appellate court considers both the information submitted in conjunction with an I.C.R. 35 motion and all of the other information in the appellate record.

The standard of review of an appeal from an I.C.R. 35 motion was reiterated by the Idaho Supreme Court in *State v. Arthur*, 145 Idaho 219 (2008). In that case, the Idaho Supreme Court stated that the new information requirement is a prerequisite for appellate review of an appeal from an I.C.R. 35 motion. *Id.* Once it has been determined that new information was provided in support of an I.C.R. 35 motion, the following standard is applicable:

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the nature of the offense, the character of the offender and the protection of the public interest.

Id. Since the requested items were available to the district court at sentencing, those items are also within this Court's scope of appellate review.

The State also asserts that the requested transcripts were not submitted in conjunction with Mr. Caldwell's I.C.R. 35 motion and, therefore, cannot be considered

on appeal because they would constitute new information. (Respondent's Brief, pp.9-11.) Whether the transcripts of the requested proceedings were before the district court at the time of the disposition of Mr. Caldwell's I.C.R. 35 motion is not relevant in deciding whether the transcripts are relevant to the issues on appeal because in reaching a sentencing decision, a district court is not limited to considering only that information offered at sentencing or in conjunction with the I.C.R. 35 motion. Rather, a court is entitled to utilize knowledge gained from its own official position and observations. *Downing v. State*, 136 Idaho 367, 373-74 (Ct. App. 2001); *see also State v. Sivak*, 105 Idaho 900, 907 (1983) (recognizing that the findings of the trial judge in sentencing are based, in part, upon what the court heard during the trial); *State v. Wallace*, 98 Idaho 318 (1977) (recognizing that the court could rely upon "the number of certain types of criminal transactions that [the judge] has observed in the courts within his judicial district and the quantity of drugs therein involved."); *State v. Gibson*, 106 Idaho 49 (Ct. App. 1984) (approving sentencing court's reliance upon evidence presented at the preliminary hearing from a previously dismissed case because "the judge hardly could be expected to disregard what he already knew about Gibson from the other case"). Thus, whether the prior hearings were transcribed or not is irrelevant, because the court may rely upon the information it already knows from presiding over the prior hearings when it made the decision to deny Mr. Caldwell's I.C.R. 35 motion.

In this case, the district court relied on its memory of the sentencing hearing when it denied Mr. Caldwell's request for counsel. In support of his I.C.R. 35 motion, Mr. Caldwell provided a detailed analysis of the financial impact his sentence was causing on his family. (R., pp.256-262.) In concluding that Mr. Caldwell provided no

new information in support of his I.C.R. 35 motion,² the district court stated, “[t]he fact that [Mr. Caldwell’s] incarceration would have a financial impact on his family was addressed during the sentencing hearing.” (R., p.287.) If the State’s interpretation of *Strand* is correct, the district court erred when it relied on the information before it at sentencing when it concluded that Mr. Caldwell provided no new information in support of his I.C.R. 35 motion, because Mr. Caldwell did not submit a transcript of the sentencing hearing in support of his I.C.R. 35 motion. While Mr. Caldwell disagrees with the district court’s conclusions, he does agree that the district court engaged in the appropriate analysis when it relied on its memory of the sentencing hearing to decide whether Mr. Caldwell provided new information in support of his I.C.R. 35 motion.


In sum, the State’s interpretation of *State v. Strand* is inaccurate, unworkable, and contradicted by the standard of review of an appeal from an I.C.R. 35 motion, contained in the *Strand* and *Arthur* opinions.

² Mr. Caldwell contested this factual finding in the Appellant’s Brief. (Appellant’s Brief, pp.23-25, 28-30.)

CONCLUSION

Counsel respectfully requests access to the requested transcripts and exhibits and requests the opportunity to provide any necessary supplemental briefing raising issues which arise as a result of that review. If it is determined that the requested items are irrelevant, Mr. Caldwell requests that this case is remanded this case with instructions for the district court to review his I.C.R. 35 motion without any consideration of the irrelevant information adduced at sentencing, which is contained in the requested items. Additionally, Mr. Caldwell respectfully requests this Court reverse the district court's order denying his I.C.R. 35 motion and remand with instructions to appoint counsel to represent him on his I.C.R. 35 motion. Alternatively, Mr. Caldwell respectfully requests this Court remand this case with instruction to place him on probation. Alternatively, Mr. Caldwell respectfully requests that the fixed portion of his sentence be reduced from three years to two years.

DATED this 14th day of March, 2012.

For 
SHAWN F. WILKERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of March, 2012, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

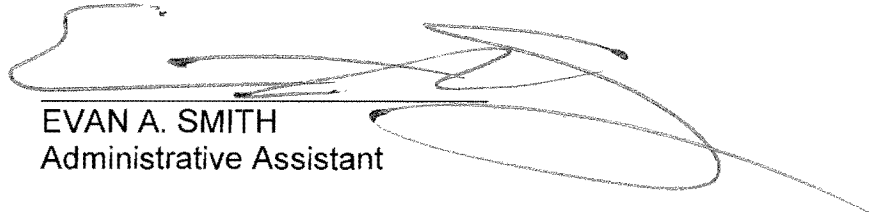
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